

Message Text

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ACTION L-03

INFO OCT-01 IO-12 ADP-00 NASA-04 PM-09 GAC-01 ACDA-19

CIAE-00 DODE-00 INR-10 NSAE-00 NSC-10 RSC-01 SCI-06

OMB-01 AF-10 ARA-11 EA-11 EUR-25 NEA-10 RSR-01 OIC-04

SS-15 INT-08 /172 W

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FM USMISSION USUN NY

TO SECSTATE WASHDC 7366

C O N F I D E N T I A L USUN 1236

E. O. 11652: GDS

TAGS: TSPA, PFOR, UN

SUBJECT: OUTER SPACE LEGAL: MOON TREATY --
NATURAL RESOURCES

REF: STATE 063090

1. US DEL HAD ON MARCH 28 STATED IN WORKING GROUP ON
MOON TREATY IN CONNECTION WITH INDIAN WORKING PAPER
THAT WE WOULD NOT ACCEPT A PRE- INTERNATIONAL REGIME MORATORIUM
ON NATURAL RESOURCE EXPLOITATION. INDIAN WP 5 PROPOSED
THAT " EXPLOITATION OF THE RESOURCES OF THE MOON AND OTHER
CELESTIAL BODIES AND THEIR SUBSOIL
SHALL NOT BE DONE EXCEPT IN ACCORDANCE
WITH INTERNATIONAL REGIME TO BE ESTABLISHED." IT WAS
IN THE LIGHT OF OUT STATEMENT THAT SWEDISH DEL
SOUGHT TO DRAFT AN ALTERNATIVE TEXT RESTRICTED TO
REQUIRING THAT PRE- REGIME EXPLOITATION SHOULD BE
CONSISTENT WITH THE GUIDING PRINCIPLES WHICH THE
LATER NEGOTIATORS ON THE INTERNATIONAL REGIME WOULD
ESTABLISH, THESE BEING SPECIFIED IN PARA 5 OF THE
CAPOTORTI (ITALIAN) TEXT AS ORDERLY AND SAFE DEVELOPMENT AND
RATIONAL MANAGEMENT, EXPANSION OF OPPORTUNITIES FOR
EXPLOITATION, AND EQUITABLE SHARING BY ALL STATES
IN BENEFITS. THUS THE SWEDISH TEXT, INCLUDED AS
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PARA 7 OF THE CAPOTORTI PROPOSAL, EXPLICITLY ANTICI-
PATES PRE- REGIME EXPLOITATION AS EVIDENCED BY THE

WORDS " TO BE" IN THE SWEDISH FORMULATION " NO ACTIVITIES SHALL BE CARRIED OUT ON THE MOON WITH RESPECT TO ITS NATURAL RESOURCES WHICH MAY BE INCOMPATIBLE WITH THE PURPOSES OF THE INTERNATIONAL REGIME TO BE ESTABLISHED AS SPECIFIED IN PARA 5 OF THIS ARTICLE."

2. THE PURPOSE OF THE WORDS " PARTS AND NATURAL REOURCES" IN THE OPENING PART OF PARA 1 OF THE CAPOTORTI TEXT (" NEITHER THE SURFACE OR SUB- SURFACE OF THE MOON, NOR, SUBJECT TO THE PROVISIONS OF ARTICLE V, PARAGRAPH 2, THEIR PARTS AND NATURAL RESOURCES SHALL BECOME THE PROPERTY OF ANY STATE...") IS TO PROHIBIT ANY EXCLUSIVE CLAIM TO EXPLOIT A PARTICULAR AREA OR A PARTICULAR RESOURCE ON THE MOON AS AGAINST ANOTHER WOULD- BE PRE- REGIME EXPLOITING STATE. SUBJECT TO THE TREATY' S NON- INTERFERENCE PROVISIONS, THIS PROVISION WOULD DENY ANY EXCLUSIVE RIGHT TO EXPLOIT ON THE PART OF A FIRST - ARRIVING STATE.

3. WE DO NOT BELIEVE THAT QUESTION COULD REASONABLY BE RAISED AS AGAINST POSSIBLE FUTURE US PRE- REGIME EXPLOITATION ON THE GROUND THAT IT WAS INCOMPATIBLE WITH ENSURING ORDERLY AND SAFE DEVELOPMENT AND RATIONAL MANAGEMENT OF NATURAL RESOURCES, THAT IT WAS INCONSISTENT WITH THE PURPOSES OF EXPANDING OPPORTUNITIES IN THE USE OF SUCH RESOURCES, OR THAT IT WOULD SOMEHOW PREVENT THE NEGOTIATION OF A REGIME CHARACTERIZED BY EQUITABLE SHARING IN BENEFITS.

4. CONSIDERATION COULD BE GIVEN TO THE DESIRABILITY OF MAKING AN ANTI- MORATORIUM STATEMENT FOR THE RECORD AT AN APPROPRIATE TIME. THIS COULD BE DONE IN THE LEGAL SUBCOMMITTEE AT THE CURRENT SESSION, AND PERHAPS REPEATED IN THE OUTER SPACE COMMITTEE AND/ OR FIRST COMMITTEE EACH OF WHICH MAINTAINS VERBATIM RECORDS. A POSSIBLE STATEMENT MIGHT READ:
" DURING THE WORKING GROUP' S CONSIDERATION OF THE TEXT CONCERNING EXPLOITATION OF NATURAL RESOURCES WHICH IS NOW INCORPORATED IN THE AGREED DRAFT TREATY, THE
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UNITED STATES DELEGATION STATED EXPLICITLY THAT WE WOULD NOT BE PREPARED TO AGREE TO ANY PROHIBITION ON EXPLOITATION PENDING NEGOTIATION OF AN AGREEMENT ON AN INTERNATIONAL REGIME CONTAINING DETAILED RULES ON EXPLOITATION.
" IN FACT, THAT TEXT BEFORE THE LEGAL SUBCOMMITTEE, WHICH WAS DRAFTED BY THE DELEGATION OF ITALY, CONTAINS NO 'MORATORIUM' PROVISION WHATEVER. INDEED, PARAGRAPH 7 OF ARTICLE (BLANK) OF THE DRAFT TREATY STATES THAT
' NO ACTIVITIES SHALL BE CARRIED OUT ON THE MOON WITH

RESPECT TO ITS NATURAL RESOURCES WHICH MAY BE INCOMPATIBLE
WITH THE PURPOSES OF THE INTERNATIONAL REGIME TO BE
ESTABLISHED AS SPECIFIED IN PARAGRAPH 5 OF THIS ARTICLE.'
THIS CLEARLY SHOWS THAT THE NETOTIATORS CONTEMPLATED
THAT STATES MIGHT ENTIRELY LEGITIMATELY CONDUCT SUCH
ACTIVITIES BEFORE OR DURING THE NEGOTIATION OF AN
INTERNAIONAL REGIME ON NATURAL RESOURCE EXPLOITATION."

5. WE WILL BE TALKING TO THE BRITISH AND
SOVIET DELS TO DETERMINE WHETHER, AS WE BELIEVE,
THE FOREGOING STATES THEIR VIEW AS WELL.
PHILLIPS

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